



**UNITED STATES
NUCLEAR REGULATORY COMMISSION**

Region III
2443 Warrenville Road, Suite 210
Lisle IL 60532-4352

July 3, 2013

EA-13-068

Mr. Michael J. Pacilio
Senior Vice President, Exelon Generation Company, LLC
President and Chief Nuclear Officer, Exelon Nuclear
4300 Winfield Road
Warrenville, IL 60555

**SUBJECT: DRESDEN NUCLEAR POWER STATION, UNITS 2 AND 3; REPORT
NOS. 05000237/2013407; 05000249/2013407(DRS) AND RESULTS OF
INVESTIGATION REPORT NO. 3-2012-020**

Dear Mr. Pacilio:

This letter refers to the investigation conducted from June 6, 2012, to March 29, 2013, at the Dresden Nuclear Power Station, Units 2 and 3 (Dresden Station). The purpose of the investigation was to determine if a Senior Reactor Operator (SRO), an Equipment Operator (EO), and/or any other personnel at the Dresden Station knew that a former SRO planned to commit a violent crime and willfully failed to report that SRO for aberrant behavior. A factual summary of the NRC investigation is enclosed.

Based on the results of the NRC investigation, an apparent violation with several examples was identified, although only one example was deemed willful. This apparent violation is being considered for escalated enforcement action in accordance with the NRC Enforcement Policy. The current Enforcement Policy is included on the NRC's Web site at <http://www.nrc.gov/about-nrc/regulatory/enforcement/enforce-pol.html>.

The NRC's requirements for reactor licensee access authorizations programs are contained in Section 73.56 of Title 10 of the Code of Federal Regulations (10 CFR). The NRC requirements applicable to this issue include the following:

10 CFR 73.56(a)(2) requires that a licensee establish, implement and maintain its access authorization program in accordance with the requirements of this section.

10 CFR 73.56(f)(1) requires that licensee and applicant access authorization programs must include a behavioral observation program that is designed to detect behaviors or activities that may constitute an unreasonable risk to the health and safety of the public and common defense and security, including a potential threat to commit radiological sabotage. Licensees, applicants and contractors or vendors must ensure that the individuals specified in paragraph (b)(1) and, if applicable, (b)(2) of this section are subject to behavioral observation.

10 CFR 73.56(f)(3) states, in part, that individuals who are subject to an access authorization program under this section shall at a minimum, report any concerns arising from behavioral observation, including, but not limited to, concerns related to any questionable behavior patterns or activities of others to the reviewing official, his or her supervisor, or other management personnel designated in their site procedures and that the recipient of the report shall, if other than the reviewing official, promptly convey the report to the reviewing official, who shall reassess the reported individual's unescorted access or unescorted access authorization status.

The apparent violation examples involve:

1. A former EO, who had unescorted access to the Dresden Station, willfully failed to report to a supervisor observed concerns arising from observed behavior indicating a change of behavior in two other former individuals who had unescorted access to the Dresden Station as required by 10 CFR 73.56(a)(2), 73.56(f)(1), and 73.56(f)(3), when the other individuals attempted to recruit him in their plans to commit a violent crime.
2. A former SRO, who had unescorted access to the Dresden Station, failed to report to a supervisor observed concerns arising from observed behavior indicating a change of behavior in another former individual who had unescorted access to the Dresden Station as required by 10 CFR 73.56(a)(2), 73.56(f)(1), and 73.56(f)(3), when the other individual attempted to recruit him in his plans to commit a violent crime.
3. A former SRO, who had unescorted access to the Dresden Station, failed to report to a supervisor observed concerns arising from observed behavior indicating a change of behavior in another former individual who had unescorted access to the Dresden Station as required by 10 CFR 73.56(a)(2), 73.56(f)(1), and 73.56(f)(3), when the other individual went along with his plans to commit a violent crime.
4. An SRO, with unescorted access to the Dresden Station, failed to promptly contact a reviewing official upon learning of questionable behavior as required by 10 CFR 73.56(a)(2), 73.56(f)(1), and 73.56(f)(3), when the SRO was informed by two reactor operators about the questionable behavior of an EO.

Since the NRC has not made a final determination in this matter, no Notice of Violation is being issued for this apparent violation at this time. The circumstances surrounding the apparent violation, the significance of the issues, and the need for lasting and effective corrective action were discussed with Mr. David Czufin and other members of your staff during an exit meeting on June 4, 2013.

Before the NRC makes its enforcement decision, we are providing you an opportunity to either: (1) respond to the apparent violation addressed in this letter within 30 days of the date of this letter; (2) request a Predecisional Enforcement Conference (PEC); or (3) request Alternative Dispute Resolution (ADR). Please contact Mr. Joseph Maynen at 630-829-9835 within ten days of the date of this letter to notify the NRC of your intended response.

If you choose to provide a written response, it should be clearly marked as "Response to the Apparent Violation in Report No. 05000237/2013407; 05000249/2013407(DRS) EA-13-068, and should include, for the apparent violation: (1) the reason for the apparent violation, or, if contested, the basis for disputing the apparent violation; (2) the corrective steps that have been taken and the results achieved; (3) the corrective steps that will be taken to avoid further violations; and (4) the date when full compliance will be achieved. If an adequate response is not received within the time specified or an extension of time has not been granted by the NRC, the NRC will proceed with its enforcement decision.

If you request a PEC, the conference will afford you the opportunity to provide your perspective on the apparent violation and any other information that you believe the NRC should take into consideration before making an enforcement decision. We encourage you to submit supporting documentation as to the corrective actions you have taken at least one week prior to the conference in an effort to make the conference more efficient and effective. The topics discussed during the conference may include the following: (1) information to determine whether violations occurred; (2) information to determine the significance of the violations; (3) information related to the identification of the violations; and (4) information related to any corrective actions taken or planned to be taken. In presenting your corrective actions, you should be aware that the promptness and comprehensiveness of your actions, as well as your prior enforcement history, will be considered in assessing any civil penalty for the apparent violation. If a PEC is held, the NRC will issue a press release to announce the time and date of the conference; however, it will be closed to public observation because the apparent violation is based on an NRC OI Report that has not been publicly disclosed and pertains to whether an individual committed wrongdoing.

In lieu of a PEC, you may also request ADR with the NRC in an attempt to resolve this issue. The term "ADR" is used to generally encompass various techniques for resolving conflicts using a neutral third party. The technique that the NRC has decided to employ is mediation. Mediation is a voluntary, informal process in which a trained neutral (the "mediator") works with both parties to help them reach resolution. If the parties agree to use ADR, they select a mutually agreeable neutral mediator who has no stake in the outcome and no power to make decisions. Mediation gives parties an opportunity to discuss issues, clear up misunderstandings, be creative, find areas of agreement, and reach a final resolution of the issues. Additional information concerning the NRC's program can be obtained at <http://www.nrc.gov/about-nrc/regulatory/enforcement/adr.html>. The Institute on Conflict Resolution (ICR) at Cornell University has agreed to facilitate the NRC's program as a neutral third party. Please contact ICR at 877-733-9415 within ten days of the date of this letter if you are interested in pursuing resolution of this issue through ADR.

In addition, please be advised that the number and characterization of the apparent violation described above may change as a result of further NRC review. You will be advised by separate correspondence of the results of our deliberations on this matter.

In accordance with 10 CFR 2.390 of the NRC's "Rules of Practice," a copy of this letter and its enclosure will be available electronically for public inspection in the NRC Public Document Room or from the NRC's Agency wide Documents Access and Management System (ADAMS),

M. Pacilio

-4-

accessible from the NRC Web site at <http://www.nrc.gov/reading-rm/adams.html>. To the extent possible, any response should not include any personal privacy or proprietary information so that it can be made available to the Public without redaction.

If you have any questions concerning this matter, please contact Mr. Maynen of my staff at 630-829-9835.

Sincerely,

/RA by Patrick L. Loudon for

Gary L. Shear, Director
Division of Reactor Safety

Docket Nos. 50-237; 50-249
License Nos. DPR-19; DPR-25

Enclosure:
Factual Summary
of NRC Investigation

FACTUAL SUMMARY OF NRC INVESTIGATION

On June 6, 2012, the U.S. Nuclear Regulatory Commission's Office of Investigations (OI), Region III Field Office, initiated an investigation to determine if a Senior Reactor Operator (SRO), an Equipment Operator (EO), and/or any other personnel at the Dresden Nuclear Power Station (Dresden Station) knew that a former SRO planned to commit a crime and willfully failed to report that SRO for aberrant behavior. The investigation was completed on March 29, 2013, and was documented in OI Report No. 3-2012-020.

During the investigation, it was determined that an EO knew that two former SROs planned to commit a crime and deliberately failed to report that information for approximately a year to a year and half, contrary to site procedures. Following the May 9, 2012 arrest of one of the former SROs, the EO related to numerous individuals onsite, to the police, to the licensee's investigators, and to the NRC investigator, a generally consistent story about being approached to participate in committing a violent crime by two former SROs at the Dresden Station. The EO related having between two to three conversations with the two former SROs that included discussions of the planned criminal activities, including preliminary planning and actions. Although the EO expressed that he was disinterested in the plan and did not think that the former SROs were serious, the EO was aware that one of the former SROs had taken several steps towards enacting his plan, including plans to map out armored car routes, plans to obtain a getaway vehicle, and obtaining body armor. Further, the EO's reported responses to the SROs provided evidence that he thought that the SROs were potentially serious about committing the planned crimes.

The EO acknowledged that he did not report what he knew to anyone during the time period that preceded the arrest of one of the former SROs. The EO further acknowledged receiving training on reporting credible threats to the plant or the health and safety of the public.

ENCLOSURE

accessible from the NRC Web site at <http://www.nrc.gov/reading-rm/adams.html>. To the extent possible, any response should not include any personal privacy or proprietary information so that it can be made available to the Public without redaction.

If you have any questions concerning this matter, please contact Mr. Maynen of my staff at 630-829-9835.

Sincerely,

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Gary L. Shear, Director
Division of Reactor Safety

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DISTRIBUTION:
See next page

****See previous concurrence**

FILE NAME: G:\ORAI\IEICS\ENFORCEMENT\Cases\Enforcement Cases 2013\EA-13-068 Dresden Carjacking\EA-13-068 Dresden Choice Letter (Rev 2).docx

OFFICE	RIII	RIII	RIII	D:OI
NAME	Lougheed Non-concur	Maynen	Rubic	Goetz
DATE	06/12/13	06/17/13	06/14/13	06/17/13
OFFICE	D:OE	D:OGC	RIII	RIII
NAME	Zimmerman ¹ Wray for	Scott ² Hair for	Orth	Shear
DATE	06/26/13	06/27/13	07/02/13	07/03/13

OFFICIAL FILE COPY

1 OE concurrence received via email from J. Wray on June 26, 2013.

2 OGC "No Legal Objection" received via email from C. Hair on June 27, 2013.

Letter to Michael J. Pacilio from Gary L. Shear dated July 3, 2013

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INVESTIGATION REPORT NO. 3-2012-020

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